IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 564 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KAMJIBHAI SINGAJI DAMA

Appearance:

Mr.U.R. Bhatt, APP for the appellant

MR MAHENDRA K PATEL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 09/02/2001

ORAL JUDGEMENT

1. The State of Gujarat, by filing this appeal under Section 378 of the Code of Criminal Procedure, 1973, has challenged the judgment and order dated April 25, 1991, passed by the learned Chief Judicial Magistrate, Himmatnagar, in Criminal Case No.1357 of 1988, by which judgment and order, the respondents came to be acquitted

for the offences punishable under Sections 325, 504 read with Section 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act.

2. It is the case of the prosecution that, on October 23, 1987, at 4.30 p.m., complainant, Dama Manjibhai Ramjibhai, was returning from a walk to his house. In the meantime, respondent No.1 had launched an attack on him with an axe and given a blow on his head. At that time, respondents Nos.2 and 3 had also come there and were shouting that "kill him and do not allow him to escape". Manjibhai raised shouts and, on hearing the shouts, his wife, Shantaben, and his cousin, Ramjibhai, had arrived at the place of the incident. Manjibhai, because of the axe blow given on his head, had become unconscious. Immediately after regaining consciousness, Manjibhai lodged a complaint at Biloda Police Station, which was registered as C.R. No.I-151 of 1987. Manjibhai had taken treatment for the injuries at Bhiloda Cottage Hospital and, thereafter, he was referred to the Civil Hospital, Himmatnagar, where he was admitted as an indoor patient for ten days. It is the further case of the complainant that the respondents are his cousins. According to the complainant, a quarrel had taken place prior to three years of the incident between his elder brother, Kanubhai, and the respondents and a criminal case was pending at Bhiloda Court when the present incident took place. According to the complainant, because of the previous enmity, the respondents had caused injuries and given abuses to him.

3. PSI, B.J. Kansara, who was at the relevant time serving in the said Bhiloda Police Station, carried out investigation and arrested the respondents on October 25, 1987 and recovered muddamal axe from them. After recording statement of the witnesses, PSI, Kansara, submitted chargesheet against the respondents in the Court of Chief Judicial Magistrate, Himmatnagar, which came to be registered as Criminal Case No.1357 of 1988. Charge Exh.7, for the offences punishable under Sections 325, 504 read with Section 114 of the Indian Penal Code and under Section 135 of the Bombay Police Act, was framed against the respondents The charge was read over and explained to the respondents. The respondents pleaded not guilty to the charge and claimed to be tried. In order to prove the charge framed against the respondents, the prosecution examined (1) P.W.1, Rameshbhai Khemabhai Parmar, Medical Officer,Bhiloda Cottage Hospital, at Exh.12, (2) P.W.2, Shantaben M Dama, at Exh.14, (3) P.W.3, Jagnaji Harji Dama, Exh.15, (4) P.W.4, Badaji Jivaji, Exh.17, (5) P.W.5, Jayanandh

Suleman Pandav, Exh.29, (6) P.W.6, Police Head Constable, Naseebkhan Rasulkhan, Exh.39, (7) P.W.7, complainant, Dama Manjibhai Ramjibhai, Exh.44, and (8) P.W.8, I.O. PSI, B.J. Kansara, Exh.47. The prosecution also produced documentary evidence such as complainant, panchanama of scene of offence, panchanama of recovery of muddamal axe, injury certificate issued by Dr. Parmar, etc. to prove the charge against the respondents. After recording of evidence of prosecution witnesses was over, further statements of the respondents were recorded under Section 313 of the Code of Criminal Procedure, 1973. In their statements, the respondents denied the case of the prosecution.

4. On appreciation of the oral as well as documentary evidence led by the prosecution, the learned Magistrate concluded that: (i) medical evidence was inconsistent with the ocular evidence; (ii) there was long-drawn enmity between the complainant and the respondents; (iii) there was inconsistency in the evidence of eye-witness, Shantaben, and injured complainant, Manjibhai, with regard to blow given by respondent No.1 on the head of the complainant; (iv) in the same incident, the respondents had also sustained injuries, for which, no explanation was offered by the prosecution and their witnesses; (v) there was no reliable evidence produced by the prosecution that the respondents had given abuses to the complainant with intention to provoke breach of peace. On the basis of abovereferred conclusion, the learned Chief Judicial Magistrate acquitted the respondents from the charges framed against them, by the impugned judgment, giving rise to the present appeal.

5. Learned Additional Public Prosecutor, Mr. U.R. Bhatt, and learned advocate Mr. M.K. Patel for the respondents, have taken me through the entire record and proceedings of the appeal.

6. Learned Additional Public Prosecutor has submitted that the prosecution had proved beyond doubt that the respondent No.1 had given axe blow on the vital part of the body, i.e. head of the complainant, Manjibhai. It is further submitted that the evidence of Manjibhai was also supported by the medical evidence of Dr. Parmar and, therefore, the learned Magistrate has erred in not believing the evidence of the complainant and Dr. Parmar to hold respondent No.1 guilty of causing grievous injury with an axe on the head of the complainant. The learned APP has also submitted that respondents Nos.2 and 3 aided and abated respondent No.1

in causing injury on the complainant and had abused the complainant with intention to provoke breach of peace. The learned APP has submitted that there was sufficient evidence produced by the prosecution to prove the charges framed against the respondents and, therefore, this appeal be allowed and the respondents be convicted accordingly.

7. In my view, there is no substance in any of the contentions urged on behalf of the appellant. The evidence of complainant, Manjibhai, was quite contradictory with the evidence of eye-witness, P.W.2, Shantaben, who is the wife of the complainant. According to eye-witness, Shantaben, respondent No.1 had come from the opposite direction and had caused injury on the head of the complainant, whereas, the complainant had deposed that respondent No.1 had come from the back side and given an axe blow on his head. The evidence of the complainant and eye-witness, Shantaben, is quite contradictory and, furthermore, it does not get support from the medical evidence of Dr. Parmar. According to the evidence of Dr. Parmar, the complainant had sustained as many as three injuries on the parietal region, whereas, according to the oral testimony of the complainant and his wife Shantaben, only one axe blow was given by respondent No.1. It also requires to be stated that the respondents had also, in the same incident, sustained injuries, for which, no explanation was offered by the witnesses examined by the prosecution. Therefore, in my opinion, the prosecution has tried to suppress the genesis of the occurrence of the incident. It is also borne out from the evidence of the complainant that, prior to the date of the incident, a quarrel had taken place between the respondents and the elder brother of the complainant and a criminal case was pending for the same in the Court at Bhiloda. From the facts emerging from the record of the case, it appears that, there was free fight between the side of the complainant and the respondents and, in that the complainant might have sustained injuries. The fact that the complainant had sustained more than one injury on his head also falsifies the case that the respondent No.1 had given only one blow with the axe on the head of the complainant. The recovery of the muddamal axe from respondent No.1 was also not proved by the prosecution. The muddamal axe and the clothes put on by the complainant were not sent to the Forensic Science Laboratory for examination to prove that the same blood group of the complainant was found on the clothes and the muddamal axe. The respondent No.1 had also sustained serious injuries as per the evidence of P.W.4, Police Head Constable, Naseebkhan Rasulkhan,

and, for the said injuries, Shardaben, wife of Roopsinh Singhaji, had lodged a complaint at 5 p.m. on the same day. The complainant lodged by Manjibhai was filed after said Shardaben lodged the complainant and, therefore, the learned Chief Judicial Magistrate was justified in holding that the prosecution had tried to suppress genesis of the occurrence of the incident and was trying to falsely involved respondents. With regard to offence under Section 504 read with Section 114 of the Indian Penal Code, the prosecution has not led sufficient evidence to hold that respondents Nos. 2 and 3, by uttering words 'kill the complainants and do not spare him and do not allow him to escape", had aided and abated respondent No.1 with intention to commit breach of peace. Under the circumstances, it cannot be said that any error is committed by the learned Magistrate in acquitting the respondents of the offences with which they were charged.

8. This is an acquittal appeal in which the court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to interfere with the order of acquittal more particularly when the evidence has not inspired confidence of the learned Magistrate who had an advantage of observing demeanour of witness. On overall appreciation of evidence, I am satisfied that there is no infirmity in the reasons assigned by the learned Magistrate for acquitting the respondents. Suffice it to say that the learned Magistrate has given cogent and convincing reasons for acquitting the respondents and the learned Additional Public Prosecutor has failed to dislodge the reasons given by the learned Magistrate in order to convince me to take the view contrary to the one already taken by the learned Magistrate. Therefore, the acquittal appeal deserves to be rejected.

9. For the foregoing reasons, I do not find any substance in the appeal. The appeal, therefore, fails and is dismissed.

February 9, 2001 (M.H.Kadri, J.)

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(swamy)